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No. 120] NEW DELHI, SATURDAY, MAY 16, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, May, 8, 1953

S.R.O. 918.—WHEREAS the Election of Shri Rajdeo Upadhyaya, as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Hata North constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Madan Pal, son of Thakur Roshan Singh, C/o. Laxmi Devi Sugar Mills Ltd., P. O. Chhitauni, District Deoria, Uttar Pradesh ;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission ;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT GORAKHPUR

PRESENT:

Sri Brij Narain—*Chairman.*
Sri Brij Behari Lal—*Member*
Sri Sukhdeo Prasad.—*Member.*

ELECTION PETITION No. 253 OF 1952

Sri Madan Pal son of Thakur Roshan Singh C/o. Laxmi Devi Sugar Mills, Ltd., Chhitauni P. O. Chhitauni, District Deoria.—*Petitioner.*

Versus

1. Sri Rajdeo Upadhyaya.
2. Sri Jagannath Dube.
3. Sri Rajeshwar Rai.
4. Sri Shyam Narayan
5. Sri Sammunder.—*Respondents.*

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Sri Ram Narain Lal Advocate and Sri Sahabzada Singh and Sri Ramanuj Vankteshwar Narayan Singh appeared for the petitioner.

Sri Harihar Prasad Advocate and Sri Govind Misra appeared, for the respondent No. 1.

Sri Gupta Misra appeared, for respondent No. 2

JUDGMENT

This is an election petition under section 81 of the Representation of the People Act (Act XLIII of 1951) on behalf of Sri Madan Pal praying that the election of the respondent no. 1 Sri Rajdeo Upadhyaya held on 25th January 1952 be declared void and the opposite party no. 2 Sri Jagannath Dubé be declared as disqualified and the petitioner be declared elected. The petitioner has alleged that he and the opposite parties No. 1 to 3 were validly nominated candidates from the Hata North Constituency of Deoria district in the last general election held under the Constitution of the Union of India. The polling took place on the 25th January 1952 and after counting of votes the respondent no. 1 was declared elected and his name was published in the U. P. Gazette dated February 26, 1952, in accordance with the provisions of section 67 of the Representation of the People Act 1951.

According to the petitioner the respondents no. 1 and 2 and their agents and supporters freely indulged in mass canvassing till the polling day and the respondent no. 1 used a private carrier no. UP Q 68 for conveyance of the electors at Khadda polling station on 25th January 1952 and his agents openly and freely carried on canvassing in booth compounds for the respondent no. 1 at Khadda polling station inspite of protests and complaints of the agents of the petitioner. It has further been alleged that the respondent no. 1 in the course of his election propaganda assured and promised to the electorate that if he is elected he would arrange to provide land to those who had less than 5 acres land or none at all and he further promised to many of the electors that their relations would be employed in various Government services if they managed to secure votes for him. The respondent no. 1 is further stated to have threatened some electors of the constituency to get them arrested if they did not withdraw their support to the petitioner. The respondent no. 1 is also alleged to have freely utilized the services of chaukidars, patwaris, mukhias, panchas and sarpanchas of Gaon Sabhas and Adalati Panchayats in this election. The respondent no. 1 is stated to have got 4000 copies of pamphlets published through his agent Kalika Lal and in this pamphlet certain false statements in relation to the personal character and candidature of the petitioner which were known to be false by the petitioner were published and these leaflets were freely distributed by the respondent no. 1, his supporters and agents throughout the constituency to prejudice the prospects of the petitioner. It has further been stated that the opposite party no. 2 got 8000 copies of a pamphlet published through Sri Moti Lal Singh and false statements were made in this pamphlet also in relation to the personal character and candidature of the petitioner which the respondent no. 2 and Moti Lal Singh knew to be false and baseless and these pamphlets were also freely distributed amongst the voters with the result that there was no free and fair election and the respondents no. 1 and 2 secured more votes than the petitioner. Lastly it has been alleged that the returns of election expenses lodged by the respondents no. 1 and 2 are irregular, incorrect and illegal.

The respondent no. 1 has contended in his written statement that the allegations in the petition are vague, indefinite and very general and neither he nor his agents nor his supporters canvassed on the polling day or in the polling booths at Khadda. The allegation regarding the use of private carrier for conveyance of electors has also been denied and it has further been denied that this respondent was guilty of any corrupt practice or that any corrupt practice was committed within his knowledge or with his consent. The allegation regarding the publication of any pamphlet by Kalika Lal at the instance of the respondent no. 1 has also been denied. It has further been contended that the case of the petitioner was worse than that of any other candidate because he has been a very old and confirmed opponent of labour movement and aspirations and he has been opposing popular causes and is very closely associated with hardened capitalists and reactionaries. The return of election expenses filed by the respondent no. 1 is said to be quite regular, correct and legal. The allegation that Vijai Bahadur Singh acted as agent of respondent no. 1 has also been denied. Accordingly to respondent no. 1, if any irregularities were committed, at all, they were committed contrary to his orders and without his consent or connivance and such practices were of trivial nature and limited character and they did not affect the result of the election and the respondent no. 1 took all reasonable precautions and adopted all reasonable means for preventing the commission of corrupt or illegal practices at the election and in all respects the election was free from all corrupt or illegal practices on the part of this respondent and his agents. Lastly it has been contended that the petitioner procured a number of private carriers and motor cars of Lakshmiganj, Ram Kola and Chhitauni Mills for conveyance of the electors to Khadda, Khutahi, Singaha and Barwa Bazar polling stations and the petitioner threatened the voters generally that if they would not vote for him purzis for supply of sugarcane to the Mills would not be issued to them, and the Mill employees of Chhitauni Sugar Mills were also threatened by the petitioner that if they would not vote for him he would have them dismissed. The petitioner is further stated to have given money to many voters as consideration for their voting for him, and he is also stated to have carried on canvassing even on the polling day and at the polling booths, and the return of election expenses filed by the petitioner is also said to be incorrect. The present election petition is also said to be time-barred.

The respondent no. 2 has also denied the allegations of the petitioner regarding corrupt practices and it has further been denied that Sri Moti Lal ever published any notice with the consent or connivance of this respondent. Lastly it has been urged that in case respondent no. 1 is held

to be disqualified, this respondent should be declared validly elected, as he had secured the largest number of votes after the respondent No. 1. Both these respondents have claimed costs against the petitioner in case this petition is dismissed by this Tribunal. The other respondents have not filed any written statement.

The following issues were framed :—

1. Are necessary particulars and specific instances of major corrupt practices, minor corrupt practices and illegal practices not given in the petition? If so, are the allegations contained in the petition general, vague and indefinite?
2. Did the opposite party No. 1 or his agents indulge in mass canvassing on the polling date and also in the compound of the polling booth at Khadda?
3. Did the opposite party No. 1 use a private carrier for conveyance of the electors other than the candidate himself, the members of his family and the agents to polling station Khadda?
4. Did the opposite party No. 1 utilise the services of Chaukidars, Patwaris or Mukhias as his agents and supporters?
5. Did any panches or sarpanch of Gaon Sabha and Adalti Panchayat work for the opposite party no. 1 as his agents and supporters? Did they do so at the instance of the opposite party No. 1? If so, with what effect?
6. Did the opposite party No. 1 get any pamphlet containing false allegations published against the petitioner and did he get the same distributed?
7. Did Kalika Lal publish any pamphlet at the instance and expense of the opposite party No. 1 as his agent and supporter?
8. Did Moti Lal publish any pamphlet at the instance and expense of the opposite party No. 2 as his agent and supporter?
9. Did the opposite parties or their agents or supporters hold out threats to injure the electors if they did not vote for them?
10. Did the opposite party or their agents hold out promises of illegal gratification in order to secure votes from the electors?
11. Was the result of election materially affected by the irregularities alleged by the petitioner?
12. Was the return of expenses filed by the opposite party No. 1 irregular, incorrect and illegal in any material particulars? If so, to what extent and with what effect?
13. Did the opposite party no. 1 himself indulge in any corrupt practice or was it committed by his agent, if at all, contrary to his order and without the sanction and connivance of the opposite party No. 1?
14. Were the corrupt practices, if any, of a trivial nature which did not affect the election and did they occur despite all reasonable precautions adopted by the opposite party No. 1.
15. Did Vijai Bahadur Singh work as an agent for the opposite party No. 1?
16. Can the petitioner not be declared elected in any case as the opposite party no. 1 was himself not guilty of any corrupt practices and the corrupt practices were, if at all, of trivial nature and limited character and the opposite party took all reasonable precautions and adopted all reasonable means for preventing the commission of such practices?
17. Is the present petition time barred?
18. Were Sri Shyam Narain and Sri Samunder also duly nominated candidates for the seat contested by the parties? If so, what is the effect of their not been made parties to this petition?
19. To what relief, if any, is the petitioner entitled?

FINDINGS

Issue No. 1.—It has been contended on behalf of the respondents that the allegations contained in the petition are vague, indefinite and very general and as the necessary particulars and specific instances are not given the allegations do not merit consideration. The allegations regarding corrupt and illegal practices have been mentioned in paras. 6 to 10, 12 to 22 of the petition and in paras. 24 to 26 it has been mentioned that returns of the election expenses lodged by the respondents Nos. 1 and 2 are irregular, incorrect and illegal, as a number of expenses actually incurred have not been shown and the return—are not prepared in accordance with law. The list required by sub-section 2 of section 83 of the Act has been given in this list and it has been clearly mentioned in paras. 1 and 2 that the respondent no. 1 with his party, viz., Balkunth Nath Bari and

Mahabir Singh, drove from village to village on 25th January 1952 in private carrier No. UPQ 68 owned by Sagar Mal of Khadda raising Congress slogans to vote for the Congress candidates and on the same day the respondent no. 1 and his agents Sahdeo and Roshan Zamir canvassed freely and openly in polling station compound Khadda. In para. 3 of the list it has been stated that the respondent no. 1 brought voters from villages Ekdanga, Pakari, Turkha and Sohrauna to the polling station Khadda on the polling day. Para. 4 this list mentions that Sri Jagannath Prasad Dubey, respondent no. 2, and his agents visited various villages in the constituency raising slogans to vote for him on the polling day. In para. 6 the respondent no. 1 is alleged to have threatened Sri Banka Lal, Rachha Pathak and Mahadeo Kalwar of Bulahwa at Chitauni on 22nd December 1951 to get them arrested if they did not withdraw their support to the petitioner. Mahabir Singh, Vijai Bahadur and Kalika Lal are stated to have acted as polling agents of the respondent no. 1 in para. 7 of the list, even though Mahabir Singh is the Adalti Sarpanch, Vijai Bahadur is Adalati Panch and Kalika Lal is said to be Government employee in the Cane Development Union of Khadda. Kalika Lal is alleged to have published the pamphlet Ex. 11/1 (paper no. 172/Ar) from Chitragupt Press, Padrauna, as agent of the respondent no. 1, and this pamphlet has been clearly stated to have contained statements of fact in relation to the personal character and candidature of the petitioner which were known to the respondent no. 1 and Kalika Lal to be false; and similarly the respondent no. 2 is stated to have got 8000 copies of a pamphlet Ex. 410/1 (paper no. 162/Ar) published through Sri Moti Lal, one of his supporters, from Gupta Industries, Bettiah (Bihar), containing facts in relations to the personal character, and candidature of the petitioner which the respondent no. 2 and Sri Moti Lal knew to be false and less, *vide* paras. 8 and 10 of the list; and in para. 12 it has been mentioned that the principal charges of the above pamphlets were not shown in the election returns. In paras. 5 and 9 it has been mentioned that the petitioner's representatives brought the various illegal and corrupt practice, committed by the respondent no. 1 to the notice of the presiding officer, Khadda, on 25th January 1952 and Ram Chabila Pande sent telegrams to the Returning Officer, Hata North and the District Returning Officer, Deoria, and a complaint was also lodged in P.S. Khadda against the illegal and corrupt practices committed on the polling day by Sri Rajdeo Upadhyaya and his agents. In para. 11 it was mentioned that form no. 26 Part I had not been sent by Sri Rajdeo Upadhyaya, respondent no. 1 nor by the respondent no. 2.

It thus appears that the election petition brought by the petitioner contains a concise statement of the material facts, on which the petitioner relies, and in the list, which accompanies the petition, full particulars of corrupt or illegal practices, which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practices and the date and the place of the commission of such practices have been given. Both the petition as well as the list have been duly verified, as required by sec. 83 of the Representation of the People Act, 1951, and so it cannot be said that specific instances of major corrupt practices, minor corrupt practices and illegal practices have not been given in the petition and the allegations made in the petition and the list accompanying it cannot be taken into consideration by this Tribunal. The cases of Sheo Narain Vaid *versus* Sardar Mal Ladwani reported in Gazette of India Extraordinary dated March 11, 1953, p. 746 at p. 657; Shri Thanu Pillai *versus* Nesamony and others reported in Gazette of India Extraordinary dated 31st December 1952, p. 1107; Kanya Lal Durlabh Ram Bhansali *vs.* Gopat Lal Mool Shanker Joshi, reported in Gazette of India Extraordinary dated October 14, 1952, p. 2272, and Sri Naginder Prasad Singh *vs.* Sri Jamuna Prasad Tirpathi and others reported in Gazette of India Extraordinary dated 21st February 1953, p. 492 at p. 497 have therefore no application to the present case.

We, therefore, decide this issue against the respondents.

Issue No. 2.—The petitioner has examined Audesh Singh (P.W.5), who has stated that the respondent no. 1 had gone to Khadda polling station on the polling day in a truck bearing no. UPQ 68 and Mahabir Singh and Baikunth Nath and some voters of Turkha and Pakri had also gone along with the respondent no. 1. This truck was stopped at a distance of 20 or 25 yards from the polling station and the voters got down and Congress slogans were shouted there and the respondent no. 1 Mahabir Singh and Baikunth Nath asked the voters to cast their votes in the box bearing the symbol of pair of bullocks. It has further been stated by Audesh Singh that Zamir Mian and Sahdeo Prasad, who were agents of the respondent no. 1, Khadda polling station canvassed for the respondent no. 1 inside the limits of the polling station, even though Audesh Singh lodged a report in P. S. Khadda about this the same day, *vide* paper no. 34/Ar, Ex. 5. Sri Audhesh Singh complained about this matter to the Presiding Officer also, but these complaints were oral. Ram Dularey (P.W.6) has deposed about the respondent no. 1's going on the truck referred to above to Khadda polling station and he has further stated about Roshan Zamir and Sahdeo Prasad's asking the voters to vote for the respondent no. 1 inside the polling station. Ram Dularey also objected to this, but the respondent no. 1 paid no heed. Then Ram Dularey raised an objection before the Presiding Officer and ultimately he got a telegram sent to the Presiding Officer through Sitaram and another telegram to the District Election Officer. The Presiding Officer received this telegram at about 3-30 P.M. and then he asked Ram Dularey to file a written objection which he did, but even then the agents of the respondent no. 1 are said to have continued their canvassing within

the polling station precincts. Ram Bahadur Singh (P.W.7) saw 15 or 16 men with the respondent No. 1 in a truck at Bulahwa polling station and Kalika Lal was also with the respondent No. 1, and these 15 or 16 workers of the respondent No. 1 were raising slogans at about 10-15 A.M. and they had distributed leaflets similar to Ex. II. Ram Bahadur Singh further saw the respondent No. 1 himself distributing these leaflets outside the polling station. This witness is no doubt employed in the Chitauri Mills, of which the petitioner is the general Manager, but we think this circumstance alone will not be sufficient to discredit his statement. Audhnath Pathak (P.W. 13) claims to have seen the respondent No. 1 and Kalika Lal distributing leaflets Ex. 11 amongst the voters a day before the actual polling. Ram Chabila Pande (P.W.17), who was the polling agent of the petitioner at Khadda, also saw the respondent No. 1 and Kalika Lal distributing leaflets Ex. 11 amongst the voters at the polling station, and he further saw the workers of the respondent No. 1 Sahdeo Prasad, Roshan Zamir and Baikunth Nath shouting Congress slogans at the Khadda polling station. This witness also complained to the presiding officer and ultimately he sent a telegram to the Returning Officer Ilari and the District Election Officer, Deoria, vide Ex. 14. In cross-examination this witness has stated that he met Kalika Lal twice and the respondent No. 1 only once during the polling day and the day preceding it and he saw respondent No. 1 holding a meeting and distributing leaflets Ex. 11 to the voters. The mere fact that the witness was not able to give the names of the voters to whom these leaflets were distributed will not be sufficient to discard his statement when it finds support from the copy of the telegram Ex. 14. Sitaram (P.W.18) was the polling agent of the respondent No. 2 at Khadda polling station and he had also seen the respondent No. 1 going to that polling station in the truck U.P.Q. 68 along with voters and the respondent No. 1 and his agents canvassed within the polling station compound in the presence of this witness. This witness also claims to have sent a telegram to the Presiding officer, Khadda and to the District Election Officer, Deoria, but copies of these telegrams have not been produced in this case. Chand Mohammad (P.W. 4) has also deposed about the distribution of the leaflets Ex. 11.

It has been argued by the learned Advocate for the respondent No. 1 that Chand Mohammad, Audhnath Singh and Ram Bahadur Singh are employees of the Chitauri Mills, while Ram Dularey, Audhnath and Ram Chabila worked as patrokers of the petitioner and so their evidence should not be believed in this case. Nothing has been suggested against Sitaram (P.W. 18) and we think that from the mere fact that some of these witnesses are employees of the Chitauri Mills their evidence cannot be brushed aside, for after all the petitioner is also an employee of the Mills and in a matter of public importance he cannot exercise undue influence on other employees to such an extent that they might be compelled to prejure themselves for his sake. The evidence of Ram Chabila (P.W.17) finds support from the telegram Ex. 14 which runs as follows :—

“ Private carrier U.P.Q. 68 utilised by Rajdeo Congress candidate against election rules. Presiding officer Khadda polling too openly canvassing for Rajdeo Upadhyia in booth compound. Complaints not entertained. Action solicited ”.

Apart from the oral evidence referred to above, the respondent No. 1 has been cross-examined on this point and it appears from his statement that Kalika Lal was his agent on the polling day, but Vijai Bahadur Singh was not his agent anywhere. Respondent No. 1 has admitted that the entire contents of the writing Ex. 15/1 are in his handwriting and he had handed it over this writing to the Secretary, Mandal Congress Committee for getting it printed. In cross-examination the respondent No. 1 has admitted in this connection that he had sent the original to the press on 13th December, 1951, but he has tried to show that he saw the printed leaflet Ex. 15 for the first time a week after the polling day. The respondent No. 1 has also admitted the letter Ex. 22 to Chitragupt Press, Padrauna, in which it was mentioned that the notice should be printed without delay. The respondent No. 1 has also admitted that Sagar Mal of Khadda has got a truck, but he never cared to enquire upto this day whether this truck bears No. U.P.Q.68. Kalika Lal (R. W. 2), who admittedly acted as agent of the respondent No. 1 in Dhunwa Tikar polling station, has admitted in cross-examination that 3 or 4 motor trucks or lorries used to bring voters about 50 or 60 in number and these trucks and lorries used to stop at the polling station for five minutes each and there used to be sufficient congregation of men near the polling booth and so this witness used to find considerable difficulty in knowing who were the Congress workers and who were the workers of the petitioner. Kalika Lal has tried to show that these trucks and buses used to bring the voters of the petitioner; but it is surprising that he made no oral or written complaint about this. This statement of Kalika Lal certainly goes to show that some truck carrying voters went on the polling stations on the date of polling, and if the petitioner's voters had been carried by means of these trucks and if canvassing had been carried on by the petitioner or his agents, Kalika Lal would certainly have sent complaints and telegrams to the authorities, because Kalika Lal is not favourably inclined towards the petitioner, as the petitioner had started a case against him, which was ultimately compromised, vide the agreement deed Ex. 21. The statement of Gopalji (P. W. 15), Manager of the Chitragupt Press, Padrauna, shows that Kalika Lal, witness for the respondent No. 1, got the leaflet Ex. 11 printed and he paid Gopalji the printing charges and the original leaflet was signed by Kalika Lal in the presence of this witness, vide paper No. 56/A1. The fact that 4,000 copies were printed at Padrauna

and were delivered on 23rd January 1952 also lends support to the petitioner's case that mass canvassing must have been resorted to by the respondent No. 1 and his agents and these leaflets must have been freely distributed, as has been deposed to by the petitioner's witnesses referred to above. The facts that the respondent No. 1 used the truck and voters were brought to the polling station through the truck and the workers of the respondent No. 1 remained standing at a short distance from the polling stations, will also make the evidence of the petitioner's witnesses referred to above very probable. If the petitioner's case on this point had not been correct, the respondent No. 1 would surely have examined the presiding officer of Khadda polling station and some police officers should also have been examined to show that the contention of the petitioner on this point was not correct, but this has not been done. Again, the respondent No. 1 took no steps against the agents of the petitioner, even though Roshan Zamir and the respondent No. 1 himself had come to know in the evening of the polling day that reports and telegrams had been sent to the Election Officer and the police officer, and this also goes to show that the petitioner's case on this point is correct. The respondent No. 1 appears to have spent a huge sum of Rs. 90 on printing charges, and so the entire evidence on this record goes to establish that there was mass canvassing by the respondent No. 1 and his agents in the polling stations as well as within 100 yards of the polling booths on the polling day, as has been alleged by the petitioner.

We therefore, hold that it has been proved in this case that the respondent No. 1 and his agents indulged in mass canvassing on the polling day and also in the compound of the polling booths at Khadda and we decide this issue in favour of the petitioner.

Issue No. 3.—The evidence of Banka Lal (P. W. 1), Chand Mohd. (P. W. 4), Audhes Prasad (P. W. 5), Ram Dularey (P. W. 6), Ram Bahadur (P. W. 7), Ram Chabila (P. W. 17) and Sita Ram (P. W. 18) shows that the respondent No. 1 used the truck U. P. Q. 68 on the polling day for bringing his voters to the polling stations for casting votes in his favour. Kalika Lal, witness No. 2 for the respondent No. 1, tried to show that no candidate used any motor car or truck on the polling day, but later on he had to admit in cross-examination that 3 or 4 motor trucks visited the polling booths where this witness worked as the polling agent of the respondent No. 1 but he tried to show that these trucks were used by the petitioner. If this statement of Kalika Lal were correct, he would surely have made an oral or written report against the petitioner, but this was not done, and so the evidence of Kalika Lal shows that the respondent No. 1 actually used this truck on the polling day. Baikunth Nath (R. W. 3) tried to show that the respondent used no motor vehicle, but as respondent No. 1 himself has admitted that he used a Jeep car, the statement of Baikunth Nath cannot be deemed to be correct. Parmeshar Shukul (R. W. 4) also tried to show that he went to Khadda polling station and there was no motor truck or motor lorry or any other conveyance for bringing voters to Khadda polling station from the Congress side. He has also tried to show that canvassing had been stopped by the Congress workers 3 days before the polling day, but in cross-examination he had to admit that he had gone to the polling station to cast his vote and he returned immediately after casting his vote and he did not stop there. He is unable to say what happened at the polling station during his absence and whether any motors went there or not. This witness was at the polling station for two minutes only and so his evidence is not of any material importance. Sheshnath (R. W. 5) remained at the polling station for utmost half an hour and he did not see any Congress worker there as he stopped at the shop of a betel-leaf seller. As this witness also did not remain at the polling station for any appreciable length of time, his evidence cannot in any way rebut the categorical statement of the witness of the petitioner on this point. Sheopujan Dubé (R. W. 9) has tried to show that on the polling day the voters of the respondent No. 1 were not taken on any truck, and in cross-examination he has stated that no motor car went to his village throughout this election period, even though the respondent No. 1 has admitted that he had used a Jeep car for election purposes. Ram Ghulam (R. W. 11) has stated that no conveyance was used by the respondent No. 1 for taking voters to the polling stations in the last election and the canvassing had been stopped 3 or 4 days before the actual polling. This witness appears to have signed the leaflet Ex. 15 and he admittedly worked for the respondent No. 1 during this election and so he cannot be deemed to be a disinterested witness. Sant Prasad (R. W. 12) was in charge of the Khadda Congress Mandal and he has stated that there was no arrangement for any conveyance for taking voters to the polling station on behalf of the respondent No. 1 on the polling day. In cross-examination this witness has admitted that petrol had been purchased by respondent No. 1 and it was used in the Jeep car which had been sent by the Government or by some Board, and this Jeep car had been received 4 days before the polling day and it worked throughout these 3 or 4 days. He has further admitted that the respondent No. 1 used to keep some leaflets similar to Ex. 15 with him and other such leaflets used to remain with his workers. Sant Prasad has professed ignorance about Kalika Lal and also about the leaflet Ex. 11, but he has admitted that leaflets similar to Ex. 10 (issued under the name of Moti Lal) had been distributed and he had seen them 5 or 10 days before the polling day. The evidence of this witness thus shows that the respondent No. 1 purchased sufficient quantity of petrol and his statement along with the statement of respondent No. 1 would go to show that his petrol must have been consumed by some truck, as it could not possibly be consumed by a Jeep car. He has admitted that he was polling agent of respondent No. 1 at Bulahwa, but he tried to show that he received no diet money or allowance from this respondent; but the return of the election expenses shows that he was paid Rs. 4/8. Voucher No. 6 of the return of election expenses, Ex. 23, shows that two months'

pay was paid on 26th January, 1952 to one Hamid as office clerk's pay ; but the statement of Sant Prasad in cross-examination shows that he did the entire writing work on behalf of the respondent No. 1 in Khadda Congress Mandal during this election. The statement of Sant Prasad and voucher No. 6 would thus go to show that the respondent No. 1 had kept two clerks for election purposes. As Sant Prasad has no direct knowledge of what happened at the polling station Khadda, we think his evidence regarding the alleged use of a truck by the respondent No. 1 is of no material importance.

Rajdeo, respondent No. 1, has denied that any truck was used by him, but it is surprising that he made no enquiries from Sagar Mal whether his truck bore No. U.P.Q. 68. He has tried to show that a Jeep car was used by him, but no documentary evidence has been produced in this case to show that he received any Jeep car from the Congress Parliamentary Board. The respondent No. 1, has, however, admitted that he took no steps to effectively rebut the petitioner's version even though he came to know that complaints and telegrams had been sent by the petitioner's witnesses referred to above, complaining that truck had been used by him on the polling day. It cannot be imagined that these complaints and telegrams had been sent by way of peshbandi, because if these complaints had been the result of some premeditated plan, a number of such telegrams should have been sent from different polling stations, but this was not done, and the telegram Ex. 14 was sent regarding Khadda polling station only. The petitioner's witnesses would never have made themselves liable for prosecution by sending false complaints to the police officers as well as to the Election Officer, and so we think the statement of the respondent No. 1, also does not conclusively rebut the statements of the petitioner's witnesses referred to above.

The statement of the respondent No. 1 regarding the purchase of petrol shows that he had purchased 12 gallons of petrol from Padrauna one or two days before he first made use of the Jeep car which is said to have been sent by the Congress Parliamentary Board. The respondent No. 1 had further brought 22 or 25 tins of petrol from Padrauna about 2 days before 22nd January, 1952 and these tins had been kept at Khadda Congress Mandal. It has further been admitted by the respondent No. 1 that all this petrol was consumed by the evening of 25th January 1952. Thus petrol worth Rs. 150 is said to have been purchased by the respondent No. 1 and its price was paid in cash. I have already mentioned above that the respondent No. 1 had not mentioned in his written statement that any Jeep car was used by him in this election, and para. 21 of the written statement goes against the present version. This para. runs as follows :—

"That the opposite party No. 1 never used any private carrier for conveyance of voters other than the candidate himself, the members of his family or his agents".

It becomes clear from the above para. that the use of the truck on the polling day was not denied by the respondent No. 1 in his written statement, but it was merely stated that voters were not carried in the truck and only the respondent No. 1, the members of his family or his agents had used it. If a Jeep had been used, it would have been clearly mentioned in this para. that no private carrier had been used but a Jeep which had been sent by the Congress Parliamentary Board had been used by the respondent No. 1 on the date of polling. If a Jeep car had been used by the respondent No. 1 and this car had been sent by the Congress Parliamentary Board, one would expect the expenses on Mobil Oil, distilled water and the driver of the car to have been shown in the return of the election expenses, but no such expenses have been shown in the return. The respondent No. 1 tried to show that he had borrowed a little Mobil Oil, but this version cannot be accepted as correct, as a huge quantity of petrol had been spent and a small quantity of Mobil Oil would not have been sufficient for touring purposes. The fact that Mobil Oil had been taken from some friend of the respondent No. 1 for election purposes should also have been mentioned in the return of the election expenses. If the respondent No. 1 had really used a Jeep car, the petitioner's witnesses would never have sent the telegram Ex. 14 and the report Ex. 5 complaining that a truck was being used by the respondent on the polling day. The report Ex. 5 (paper no. 34/A1) runs as follows:—

"I have to inform you that just near 1 p.m. the U.P.Q. 68 private carrier came from villages with voters at Khadda polling station. The voters were shouting with Congress slogans which is highly objectionable and against election rules.

Submitted for necessary action."

The petitioner's witnesses raised a hue and cry immediately after the truck began its work and complaints were made to all the officers both verbally and by means of telegrams and reports and in these complaints the number of the truck was clearly mentioned. If these reports were incorrect, the respondent No. 1 would have taken some steps to disprove the allegation, but he did not do so.

Even if it is assumed for a moment that the respondent No. 1 used a Jeep car, the huge quantity of petrol which was consumed by him, could not possibly have been consumed by a Jeep car, which is said to have been used a few days prior to 22nd January 1952 and then on 25th January 1952. It appears from the statement of the respondent No. 1 that 25 tins of petrol was consumed on the polling day when the respondent travelled only about 40 to 50 miles, or at the most 70 to 80 miles. Respondent No. 1 could not therefore have consumed more than 5 tins of petrol on the polling

day, and even if some allowance is made for leakage or missing, 8 tins might have been consumed, and about 15 to 17 tins would remain wholly unaccounted for, and so the evidence of the petitioners' witnesses to the effect that truck U.P.Q. 68 was used by the respondent No. 1 for bringing voters appears to be probable.

It has been argued that the petitioner's case on this point should not be accepted as correct, for no permit of the truck had been produced in this case. It has not been shown that any permit was obtained for this truck by the respondent No. 1 and as no permit appears to have been obtained, the same or a copy of it could not have been produced by the petitioner. Once it is established that huge quantity of petrol was consumed by the use of a truck, the respondent No. 1's theory that the truck was used by him, the members of his family or his agents, cannot be believed, for if this were a fact, the respondent No. 1 would not have changed his case altogether at the time of evidence and he would not have come forward with the theory that only a Jeep car had been used by him. The evidence of the petitioner's witnesses mentioned above becomes very probable and we believe their evidence and we hold that the respondent No. 1 did use a private carrier No. U.P.Q. 68 for conveyance of the electors to the polling station Khadda and we decide this issue in favour of the petitioner.

Issue No. 4.—It has not been established in this case that the services of chaukidars, patwaris or mukhtas were utilized by the respondent No. 1 in order to promote his prospects in this election and this issue is decided against the petitioner.

Issues Nos. 5 and 15.—Both these issues can conveniently be taken up together for consideration. Sri Raideo Unadhu respondent No. 1 has admitted in cross-examination that the name of Kalika Lal (R.W.2) is printed on the programme Ex. 15 but he has tried to show that his name was printed there by mistake as Kalika Lal was a labour leader and a servant of the Cane Development Department and he did not belong to the Congress Mandal, Khadda; but the respondent No. 1 had to admit that he did not inquire from Sri Shyam Badan upto the date of hearing of this case as to why had he obtained the signatures of Kalika Lal on Ex. 15 and the respondent No. 1 also failed to inquire from Kalika Lal as to why had he signed Ex. 15. In fact the respondent No. 1 never cared to have any talk regarding Ex. 15 upto the date on which he was cross-examined in this case. The respondent No. 1 has however admitted that he acted on the programme laid down in Ex. 15. Kalika Lal (R.W.2) has admitted in his statement that he was the agent of the respondent No. 1 in Dhuan Tikar polling station. Similarly Mahabir Singh (R.W.8) has admitted that he is the Vice President of Hata Tahsil Congress Committee and he worked as the polling agent of the respondent No. 1 at Bolahwa polling station. In cross-examination this witness had to admit that he is the Adalti Sarpanch and the Gram Sabhapati of Khadda.

Regarding Bhai Bahadur Singh it was alleged in Item No. 7 of the list appended to the petition that Sri Bhai Bahadur Singh, Adalti Panch worked as polling agent of the respondent No. 1 during this election but this version was denied in para. 34 of the written statement. It is however established from the return of election expenses of the respondent No. 1, *vide* form No. (2)C, paper No. 259C/23 at Item No. 10, that Rs. 3/8/- were paid to Bhai Bahadur Singh, polling agent on account of travelling expenses and diet money, *vide* Ex. 22. It is thus proved in this case that Mahabir Singh and Bhai Bahadur Singh Adalti Panches worked for the respondent No. 1 in this election as polling agents and Kalika Lal, a servant of the Cane Development Department, also worked as polling agent of the respondent No. 1.

It has been contended on behalf of the petitioner that the respondent No. 1 would be deemed to be guilty of a major corrupt practice as he utilized the services of Panches, Sarpanches and Government Servants for furthering the prospects of his election. Sec. 123(8) is in point and it runs as follows:—

The following shall be deemed to be corrupt practice for the purpose of this Act:

The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person.

Explanation.—For the purposes of this clause—

- (a) A person serving under the Government of India shall not include any person who has been declared by the Central Government to be a person to whom the provisions of this clause shall not apply;
- (b) A person serving under the Government of any State shall include a patwari, chaukidar, dafadar, zildar, shanbagh, karnam, tallati, talari, dital, village munsif, village head man or any other village officer by whatever name he is called, employed in that State, whether the office he holds is wholetime office or not, but shall not include any person (other than any such village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply.

A perusal of this sub-section clearly shows that if a candidate obtains any assistance for the furtherance of the prospects if his election from any village officer by whatever name he is called and employed in the State, the candidate will be deemed to have been guilty of a major corrupt practice. We have, therefore, to see whether Kalika Lal, Mahabir Singh and Bijai Bahadur Singh can be deemed to be persons employed in the U. P. State for the purposes of sub-section (8) of section 123 of the Act.

Regarding Kalika Lal it is clear from the evidence of Kalika Lal himself that he has admitted that he is employed in the Cane Development Department and Sri Rajdeo Upadhyaya, respondent No. 1, has also admitted this fact. The learned Advocate for the respondent No. 1 has urged that as Kalika Lal and Sri Rajdeo Upadhyaya have not admitted that this Cane Development Department is of the Government of Uttar Pradesh Kalika Lal cannot be deemed to be an employee of the State. It has been contended that the actual working of the Cane Development Department is that the A.C.D.O. organizes on the spot Cane Development Unions of cane growers and he functions as the Secretary of the Unions in order to guide and help them and these Unions employ various servants. These servants are servants of these Unions registered under the Cooperative Societies Act. Even though their appointments are subject to the approval of the Cane Commissioner, these servants remain servants of the Unions, *vide* the United Provinces Sugar Factories Control Rules 1938, R. 4A—paras. 1 to 6. The petitioner has himself mentioned in item No. 7 of the list that Kalika Lal is an employee of the Cane Development Union of Khadda and so it is to be seen whether he can be deemed to be a Government Servant or not. It has been contended on behalf of the petitioner that the Government need not necessarily be the employer of Kalika Lal but if the Government exercises control over him, he will be deemed to be a Government Servant. In Wharton's Law Lexicon 12th Edition a servant is said to be a person who is called for the assistance of others and the master is supposed to exercise control over the servant.

'Servant' has been defined by Webster as one who serves or does service voluntarily a person who is employed for another for menial offices or for other labour and is subject to his command; a person who labours or exercises himself for the benefit of another, his master or employer; a subordinate helper. A servant is one who is employed to render personal service to his employer, otherwise than in pursuit of an independent class, and who in such service remains entirely under the control and direction of the latter who is called his master. Any person who works for another for a salary is a servant in the eye of law. The term servant is very broad and if taken in its legal sense would embrace all classes of persons retained hired or employed in the business of another, *vide* the law Lexicon by P. Ramanatha Aiyer 1940 Edition.

The above definitions clearly lay down a number of tests in order to determine whether a particular person can be legally deemed to be a servant of another and these tests are :

- (1) Whether the person who is said to be the servant of another has been appointed and can be dismissed by the alleged master,
- (2) Whether he is under the control and works according to the directions of the master,
- (3) Whether he receives any remuneration (emoluments) from the master, and
- (4) By the functions discharged by him he assists his master.

As Kalika Lal does not receive any salary from the Government, U. P., he is not directly under the control of the Government and he does not work at the behest of the Government and as appointments to the staff of the Cane Development Unions are made by the Cane Development Officer in consultation with the Central Cane Marketing Board to which the Union is affiliated and the administrative control of the Union staff including their transfer, punishment or removal is vested in the Cane Development Officer subject to the superintendence of the Central Cane Marketing Board, *vide* rule No. 34 of the Model Bye-laws for Central Cane Development and Marketing Union Ltd., we think that Kalika Lal cannot be deemed to be a Government Servant and simply because he worked as a polling agent of the respondent No. 1, the respondent No. 1 will not be deemed to have committed any major corrupt practice on this account.

The cases of Mahabir Singh Adalati Sarpanch, and Bijai Bahadur Singh, Adalati Panch, however, appear to be different. We have already mentioned that the respondent No. 1 tried to conceal the fact that Bijai Bahadur Singh worked as his polling agent in the pleadings but this fact is proved by the return of his election expenses. Applying the tests mentioned above to the cases of Mahabir Singh and Bijai Bahadur Singh we find that they do not receive any emoluments from the Government but they have been appointed under the U. P. Panchayat Raj Act. It has been contended that they have been appointed by election and so their appointment should be deemed to be made by the entire village population. It has further been contended that Mahabir Singh and Bijai Bahadur Singh worked outside their circles and so the respondent No. 1 cannot be deemed to be guilty of any corrupt practice as rule 61A of the U. P. Panchayat Raj Act Rules provides that if any Sarpanch or Panch of a Panchayati Adalat or his son or brother or any other close relation desires to stand for election to a local body other than a Gaon Panchayat or Panchayati Adalat or to the State Legislature from the area in which he exercises jurisdiction

the Sarpanch or Panch concerned shall inform the prescribed authority concerned of such intention. The prescribed authority shall immediately take steps to ensure that the Sarpanch or Panch does not take part in any Bench for the disposal of cases or suits or proceedings of the area to which the election relates. No Sarpanch or Panch shall take part in any election to a local body other than a Gaon Panchayat or Panchayati Adalat or to the State Legislature in any area within his jurisdiction otherwise than by casting his own vote as an elector according to this rule. The Sarpanch or Panch of a Panchayati Adalat has been empowered to take part in election outside the local area of his jurisdiction. The U. P. Panchayat Raj Act was passed on the 5th June, 1947 and it received the assent of the Governor General of the Dominion of India on the 7th December, 1947 and it came into force on the 27th December, 1947. The Representation of the People Act 1951 came in force later on and so the provisions of section 123 sub-section (8) cannot in any sense be governed by Rule 61A of the U. P. Panchayat Raj Act Rules and so if Mahabir Singh and Bijai Bahadur Singh can be deemed to be village officers employed in the State the provisions of Rule 61A of the U. P. Panchayat Raj Act Rules cannot help the respondent No. 1 even though these people worked outside their territorial jurisdiction for the respondent No. 1. The learned Advocate for the respondent No. 1 has urged that these Adalti Panches are not appointed by the Government but they are only recognized as such and as they receive no remuneration and they do not work on any regular basis at regular intervals they cannot be deemed to be Government Servants. Reliance has been placed on *Swaroop Narain vs. Durga Narain*, reported in *Jagat Narain's Election Petitions* Vol. III, p. 22 at p. 49, in which it has been held that the District Board Servants are not Government Servants and are not prohibited from taking part in elections and also on *Sarin's Indian Election Law*, p. 503. But as Mahabir Singh and Bijai Bahadur Singh are not the servants of the District Board or the Municipal Board these rulings do not help the respondent No. 1 in any way.

The language of sub-section (8) of section 123 clearly shows that the acid test of crux which ought to be applied now in order to determine whether any person alleged to have worked for a candidate as a person serving under the Government of any State under clause (b) of the explanation is that the person should not be able to confer any advantage on the candidate of the influence which such person as a Government Servant or village officer by reason of his position is supposed to have with the public. The fact that he does not receive a regular pay from the Government Treasury will not be of any material consequence nor will the fact that the appointment is made by election be of any material importance. The Representation of the People Act 1951 has included in the category of persons serving under the Government of any State the *patwari*, *chaukidar*, *dafadar*, *zileadar*, *shanbagh*, *karnam*, *talari*, *patil*, *village munsif*, *village-headman* or any other village officer by whatever name he is called employed in that State. It clearly covers the cases of all the village officers whether they receive any salary from the Government or not. The village head-man and the village munsif do not receive any salary from the Government. The Sarpanch, Panches of Adalti Panchayats and Sabhapati of Gram Sabha are undoubtedly village officers serving in the State as they discharge certain duties under the control and supervision of the State and in exercise of these functions they command immense influence in the village. The Adalti Panches are invested with judicial functions and they are included in the term 'Magistrates' as defined in the General Clauses Act, and revisions from their decisions are heard by the Honourable High Court and also by S. D. Ms. and Munsifs. They have to function under the authority and control of prescribed authority appointed by the Provincial Government, *viz.*, the District Magistrate under Rule 83. The District Magistrate is also empowered to receive their resignations and he is further empowered to remove them from office. They are public servants under section 28 of the U. P. Panchayat Raj Act and as Chapter VII of the U. P. Panchayat Raj Act provides for the external control over these Panches and Sabhapatis it becomes clear that they are serving as village officers in the State of U. P.

An 'Office' (as defined by Cowell) is a function by virtue whereof a man has some employment in the office of another. Webster defines it to be a duty, charge or trust. He who performs a duty of a public office is an officer. He who has a public charge or employment or even a particular employment affecting the public is said to hold or be in office. A village officer would thus mean every functionary in the village invested with some power, authority or control of the office of the village and as Sabhapati, Adalti Sarpanch and Panch are invested with sufficient powers and control in the affairs of the village they will be deemed to be village officers serving in the U. P. State within the meaning of clause (b) of explanation to sub-section (8) of section 123 of the Representation of the People Act, 1951, *vide Gazette of India Extraordinary*, Part II, Section 1, dated 23rd August, 1952, page 2008, *Srimati Hansa Jiaraj Mehta Vs. Indu Bhai Ballabh Bhai Amin and others*.

Section 123 (8) of the Act does not lay down any exception in case of Panches and Sarpanches who work in the election in different villages nearabout their territorial jurisdiction as was the case in Rule 61A of the U. P. Panchayat Raj Act Rules and so it becomes clear that the fact that Mahabir Singh and Bijai Bahadur Singh of Panchayati Adalat worked as polling agents of the respondent No. 1 goes to establish that the respondent No. 1 has been guilty of a major corrupt practice by taking work of polling agents from these Panches. Looking to the duties of a polling agent which are primarily to safeguard the interest of a candidate in the election there cannot be any doubt that the assistance given by a polling agent is in furtherance of the prospects of the candidate's election, *vide* Government of India Gazette Extraordinary Part II, section 3, No. 45 (*Sri Ghasi Ram versus Sri Ram Singh and others*), page 477 at page 490.

We therefore hold that Mahabir Singh, Sarpanch, Panchayati Adalat and Sabhapati, Gram Sabha, Khadda and Bijal Bahadur Singh, Adalti Panch, worked as the polling agents of the respondent No. 1 in the last elections and as they have been village officers serving in the U. P. State their working for the respondent No. 1 in furtherance of the prospects of his election amounts to a major corrupt practice under sec. 123, sub-sec. (8) of the Representation of the People Act, 1951. We decide both these issues in favour of the petitioner.

Issues Nos. 6 and 7.—Both these issues are connected and can be conveniently taken up together.

The petitioner has produced a printed copy of the leaflet which is alleged to have been issued by Kalika Lal *vide* Ex. 11, paper No. 56/A1 and the original pamphlet has also been produced *vide* Ex. 11/1, paper No. 172/A1 and Gopalji (P. W. 15) has been examined to prove these documents. The letters dated 20th April 1952, Ex. 8 and 25th April, 1952, Ex. 14 as well as the postal receipt, Ex. 2, show that the petitioner made certain inquiries from the press about this leaflet and the reply dated 2nd May 1952, Ex. 13, was received by him, *vide* also the letters, Exs. 6 and 12. The petitioner has tried to show that the allegations made in the leaflet, Ex. 11 had been substantially mentioned in the prior pamphlet issued by Moti Lal who worked for the respondent No. 2 *vide* the printed pamphlet, Ex. 10, paper No. 57/A1 and the original pamphlet, Ex. 10, paper No. 162/A1 which have been proved by Sri B. P. Gupta, proprietor of Gupta Industries, Betia (P. W. 11). The petitioner had made inquiries about this leaflet by means of the letter dated 23rd April, 1952, Ex. 7, *vide* the postal receipt, Ex. 1.

According to the petitioner's allegations the leaflet, Ex. 11 was published by Kalika Lal, Agent of the respondent No. 1 within the knowledge of this respondent. Kalika Lal has tried to show that he never got the leaflet, Ex. 11 published or printed and the leaflet Ex. 11, does not bear his signatures and so it is to be seen : (i) whether Kalika Lal took leading part in canvassing for the respondent No. 1, (ii) whether Ex. 11 was printed and published by Kalika Lal, (iii) whether the printing and publishing of Ex. 11 was done by Kalika Lal with the knowledge, consent and at the expense of respondent No. 1, (iv) whether the pamphlets Ex. 11 were distributed amongst the voters, (v) whether the statements contained in Ex. 11 were false and defamatory, and (vi) whether the publication of the pamphlet, Ex. 11 was calculated to affect the result of the election.

In order to show whether Kalika Lal really worked for the respondent No. 1, the petitioner has relied on the pamphlet containing Programme, Ex. 15, paper No. 50/A1 and also on its original, Ex. 151, paper No. 173/A1 and this leaflet contains the signatures of Kalika Lal. It is admitted by the respondent No. 1 that the programme mentioned in this leaflet was adhered to by him during this election. Rajdeo Upadhyaya, respondent No. 1 at first tried to show that he passed on the draft, Ex. 15/1 to the Secretary, Mandal Congress Committee for getting it printed without the names of the signatories and the Mandal Congress Committee wrote out the list of signatories and got their names printed but later on he had to admit that he himself had sent the original draft to the press and that he did not send it to the Mandal Congress Committee. Later on he tried to show that Shyam Badan got the signatures on this leaflet even though Shyam Badan had never been authorized to obtain signatures from anybody he liked. Shyam Badan has not been examined in this case and so it becomes clear that the signatures of Kalika Lal were obtained on this programme at the instance of the respondent No. 1 himself and Kalika Lal actually worked as the agent of the respondent and he as proved by the petitioner's witnesses to have taken an active part in canvassing for the respondent No. 1. Rajdeo Upadhyaya tried to show that he never saw the leaflet, Ex. 15 during the whole of the election but he had to admit that he adhered to the programme mentioned therein and so his statement to the above effect cannot be believed. Sant Parsad (R. W. 12) has clearly admitted that the respondent No. 1 used to keep some leaflets similar to Ex. 15 with him and such other leaflets used to remain with his workers and so it is established that the respondent No. 1 knew that Kalika Lal had signed Ex. 15 and as his name was given the first place amongst the signatories, he was always regarded as the principal worker on behalf of the respondent No. 1. The theory that Kalika Lal's name was printed on Ex. 15 by an accidental mistake cannot be accepted as correct under the circumstances mentioned above. Banke Lal (P. W. 1), Rachha Pathak (P. W. 2), Ram Dulare (P. W. 6), Ram Bahadur (P. W. 7), Sheo Balak (P. W. 8), Shambhu Lal Singh (P. W. 9), Munni Lal (P. W. 12), Oudh Narain (P. W. 13), Madan Pal Singh, petitioner (P. W. 14), Ram Chabila (P. W. 17) and Gopalji (P. W. 15) have deposed on this question and their evidence shows that Kalika Lal (R. W. 2) actually took a prominent part in the election campaign of the respondent No. 1 by going from village to village for canvassing and addressing a large number of meetings, by distributing leaflets, by touring along with the respondent No. 1, by transporting voters in the truck, by issuing pamphlets, Exs. 15 and 11 and by admittedly figuring as polling agent for the respondent No. 1. Kalika Lal is a worker of the I. N. T. U. C. which is practically a Congress organisation and so he would be expected to work for the respondent No. 1. It has been mentioned in para 27 of the written statement of the respondent No. 1 that Kalika Lal is an organizer and leader of labourers who have ever felt aggrieved against the petitioner and have treated him as their enemy and so Kalika Lal would have every reason to oppose the petitioner as far as he possibly could and it is no wonder that a number of allegations were made by him against the petitioner in Ex. 11. Baikunth Nath (R. W. 3) has admitted that the signatories of Ex. 15 assembled several times along with this witness in different meetings and some of these signatories

used to make speeches during the meetings and some of the facts mentioned in Ex. 11 used to be narrated by these speakers. Kalika Lal is a signatory of Ex. 15 and even though Baikunth Nath makes an exception in the case of Kalika Lal, Baikunth Nath's statement referred to above and the circumstances mentioned above clearly show that Kalika Lal also attended the meetings and he addressed the meetings also. The evidence of Sri Shibban Lal Saxena (P. W. 9) who appears to be a disinterested witness also shows that Kalika Lal worked in this election on behalf of the respondent No. 1 and so it becomes clear that the evidence on this record goes to show that Kalika Lal took a leading part in canvassing for the respondent No. 1 and he worked as his agent and he was also one of the signatories of Ex. 15.

So far as the question whether the pamphlet Ex. 11 was printed and published by Kalika Lal or not paras 14 and 20 of the written statement of the respondent No. 1 show that the fact of the printing and publishing of Ex. 11 by Kalika Lal was not denied and it was merely contended that Kalika Lal did not act as an agent of the respondent No. 1 and Kalika Lal himself incurred the necessary expenditure in this connection. The evidence of Gopalji (P. W. 15) shows that Kalika Lal got this pamphlet, Ex. 11 printed and he paid the printing charges to this witness and the original leaflet was signed by Kalika Lal in the presence of this witness. As Gopalji appears to be a disinterested witness I think the evidence of Kalika Lal to the effect that he did not sign the original of Ex. 11 cannot be accepted as correct. Kalika Lal is a labour leader of the I. N. T. U. C. and as such he was made to sign this pamphlet because his name was calculated to inspire more confidence in the minds of the labourers and readers. The signatures on the original of Ex. 11 appear to be similar to the admitted signatures of Kalika Lal on his deposition before this Tribunal, *vide* also Ex. 21, and so it becomes clear that the pamphlet, Ex. 11 was actually got printed and published by Kalika Lal.

It has been emphatically denied by the respondent No. 1 that the pamphlet, Ex. 11 was published within his knowledge and with his consent and at his expense. No good reason has been suggested on behalf of the respondent No. 1 why Kalika Lal should have taken the trouble of drafting the leaflet Ex. 11 and then of getting it printed after going to Padrauna and spending more than Rs. 90 on it without bringing the fact of publication in the knowledge of the respondent No. 1. Kalika Lal does not appear to be in affluent circumstances and so the prosecution case that he acted as the agent of the respondent No. 1 becomes probable. Kalika Lal probably got this leaflet published because he thought that the respondent No. 2 was getting the upper-hand on account of his circulating the pamphlet, Ex. 10. The evidence of the petitioner's witnesses shows that the respondent No. 1 and Kalika Lal, besides others, actually distributed the pamphlet, Ex. 11 amongst the voters and as their evidence finds support from the circumstances mentioned above we think that the petitioner's evidence on this point should be believed. The respondent No. 1 has shown an expenditure of Rs. 75 on 23rd January 1952 when the printing charges of Ex. 11 were paid to the press. He also went to Padrauna on the date of delivery of the printed notices and as no vouchers have been filed regarding this expense of Rs. 75 and another item of Rs. 15 is shown on account of printing charges without any vouchers it becomes probable that the sum of Rs. 90 which was spent on Ex. 11 was spent by the respondent No. 1 himself through Kalika Lal. It thus becomes clear that the leaflet Ex. 11 was printed and published with the knowledge, consent and at the expense of the respondent No. 1.

The leaflet, Ex. 11 was admittedly distributed *vide* the statement of Baikunth Nath (R. W. 3) and as about 4,000 such pamphlets were distributed according to Baikunth Lal, Chand Mohammad, Ram Dulare, Ram Bahadur Singh, Sheobalak, Munni, Audh Nath Pathak, Madan Pal Singh and Ram Chabila, witnesses and as a substantial amount was spent on the printing and publishing of this leaflet the petitioner's case that these leaflets were intended to give the final blow to his election chances seems to be correct. The respondent No. 1 has no where categorically denied the distribution of these pamphlets and so we hold that it is proved in this case that the pamphlet, Ex. 11 was widely circulated amongst the voters on the 24th and 25th January, 1951.

Before proceeding to determine whether the allegations in Ex. 11 are false and defamatory it would be necessary to reproduce its contents here :

"He who sacrificed pleasure and comfort shall get my vote. It is suicidal to vote for Thakur Madan Pal Singh candidate for Hata North Constituency, the General Manager of the Laxmi Devi Sugar Mills, agent of the well-known capitalist, Sri Kedar Nath Kheta. He is avowed enemy of the 1942 revolution, a friend of Mr. Moss, the then Collector of Gorakhpur district, supporter of western civilization and of the Rashi Swayam Sewak Sangh, the mother of the communalist, a man who even now sheds tears for the Imperialistic British reign being ended, one who sucks the blood of the cultivators and the labourers to fill the purse of the capitalists and a true representative of the capitalists and zamindars.

Brothers,

On the advent of the election many of the reactionaries also have come out like frogs of the rainy season to occupy the chairs in the administration of the country, though this chair is meant for those brave and dear sons of the mother land who have sacrificed their all for the good of the country. It is not meant for such persons with whose actions mother land and humanity as a whole stand ashamed.

I must give some introduction of the aforesaid Thakur Sahab so that it may become easy for you to appreciate why Thakur Sahab is unfit to occupy the holy seat

First of all I will attempt to tell you why the proprietors of the Chitauri Mills give him a salary of Rs 2,000 per month and thousands of rupees annually as bonus increments and reward

Before the year 1939 when British Government was in the country cane of cultivators was regularly in broad day light underweighed in sugar-mills. In those days underweighing was far more rampant in Chitauri Mills than in any other mills. During the time when Mathur Sahab was cane inspector the Government deputed staff to detect it. It is needless to say how honest the Government Servants used to be then. The result was that Thakur Sahab succeeded in satisfying the officials who made inquiries in every possible manner and thereby he succeeded in preventing the fraud being brought to light and so underweighing of cane continued. In those dark days Chitauri Mills earned enormous money. Other managers did not dare to commit loot in this manner. Since then the proprietors of Chitauri Mills and specially Sri Kedar Nath Khetan began to favour Thakur Sahab immensely. The whole history of his life has been against the well-being of the people.

In the year 1939 in every sugar mill labour organizations were started. All the 17 workers of Chitauri Mills who took steps to organize the labour were crushed by the high-handedness of Thakur Sahab and were dismissed. It was Thakur Sahab who was responsible for the lathi charge on Sri Shibban Lal Saxena and other volunteers.

In 1942 when Indian public was groaning under the repressive measures of the Government, when all the leaders were lodged in the jail, when there was no limit to the atrocities of Moss, the Collector of Gorakhpur, Thakur Sahab joined hands with Mr Moss and helped him in burning the village Patlahwa. To celebrate all these atrocities he entertained Mr Moss to dinner. After the independence of India when R S S organization gathered strength Thakur Sahab actively cooperated in it. When the whole country was burning in the flames of communalism in consequence of which Mahatma Gandhi was assassinated, Thakur Madan Pal Singh added sufficient fuel to the fire. In celebration to the murder of Bapu he along with Sangh people made great rejoicing and enjoyed sweets. In the result he had to be in jail for 3 days. In the year 1946 when the labour raised its voice against Thakur Sahab's Hitlerism and started labour organizations, they were attacked from all sides. Hundreds of amenities of the labour were stopped. A number of labour leaders and workers were dismissed and a number of cases were started against the labour. Two criminal cases were filed against labour leaders. Even today cases against the labour are pending before the Conciliation Board, the State Industrial Tribunal, the Appellate Tribunal and the High Court. Criminal cases were also filed against the cultivators along with the workers wherein the cultivators of Kanora and Siswagouti were implicated.

In the year 1946 Nehru Ji visited Gorakhpur and some clerks after obtaining leave from Departmental Heads went to Gorakhpur to listen to his speeches. They were suspended by Thakur Sahab for this.

According to Cane Rules all cultivators should be treated alike whether big or small, but at his place the first line is reserved for big cultivators and proprietors. If the big cultivators are given purzis on 5 acres land the smaller cultivators are given the ticket on 25 acres or 30 acres. Big cultivators are given advances for cane without interest but ordinary or small cultivators are not treated in this manner. Cultivators in general are roughly handled while unloading their cane or taking the price of purzis, whereas, big cultivators receive their payments while sitting on the chairs. According to cane rules there should be pucca shed for parking ground for protection of cart-men and bullocks in rains etc. and there should be pucca trough for water, but there is no such arrangement.

The manure of the parking ground should be given to cultivators but that also is used in the farm of the proprietors. He holds darbar where cultivators cannot reach and they have to wait for his permission to meet him and even big officers go there after taking permission. He is very clever in the art of looting the workers and cultivators to fill the purses of the capitalists. Under the Government orders no workers of the mill should be paid less than Rs 2/2/- per day. In his mill even now a number of workers receive only Rs 1/8/- per day. Almost all the sepoys are employed in the circle without entering their names in the register. For about 3 years 150 to 200 temporary men are employed in the permanent or seasonal posts.

Cultivators do not get sugar out of the gate-sale. The sugar of the workers is sent in the black market as and when opportunity is found. Last year 6 bags of sugar-cane in the name of cultivators were transported to Behar to be sold in black market. When this sugar was caught red-handed at that time even a seer or two of sugar was not available to cultivators.

Now Thakur Sahab is not only a manager earning 40 to 50 thousands but also a proprietor of 250 acres land. He has also other land here and there.

A sugar-factory which makes a profit of 16 to 20 lacs in which lacs of rupees are donated to sacred funds by cutting the throat of cultivators, neither pays in time the price of cane nor the wages of labourers, but big cultivators or labourers are able to get on smoothly. He is still shedding

tears for the end of British Rule. He prefers western civilization. He has been set up in election by Kedar Nath Khetan and other proprietors of the mills. This is the reason why the motors and factory employees are working day and night.

Now you may consider whether Thakur Madan Pal Singh, if elected to the Assembly, will work for your uplift or for the uplift of the capitalists".

The imputations made against the petitioner in this leaflet are (1) the sucker of tenants' blood, (2) one who resorts freely to underweighing, (3) one who by improper methods won over the officers who made the inquiry, (4) one who was capable of enormous loot on tenants, (5) one who is wholly antinational, (6) one who was responsible for lathi charge on Sri Shibban Lal and other volunteers, (7) one who abetted the burning of Patiahwa village, (8) one who rejoiced at the murder of Gandhi Ji, (9) one who badly and in numerous ways crushed the labourers in 1946, (10) one who suspended the employees of the mills who went to attend Pt. Jawahar Lal Nehru's speech, (11) one who pays wages a Rs. 1 or Rs. 1/8/- instead of Rs. 2/2/- fixed by the Government, (12) one who deprives the labourers of their sugar and drives the same to black market and (13) one who sheds tear for the British Government having ended.

Sri Madan Pal Singh petitioner (P. W. 14) has denied all these allegations and he has produced the order Ex. 16, paper No. 201/A which shows that he did not suspend anybody for attending the lecture of Pt. Jawahar Lal Nehru (now the Hon'ble Sri Jawahar Lal Nehru, Prime Minister of India), *vide* also Ex. 17. The letter dated 20th June 1941 Ex. 18, paper No. 203/A1 has been produced to show that the charge of under-weighment of cane was not established after a thorough departmental inquiry by the Government. The voucher Ex. 19 and the bill Ex. 20 have been produced to show that the petitioner never rejoiced on the death of Mahatma Gandhi. On the other hand sufficient money was spent on charity in that connection by the Chitani Milla. Sri Shibban Lal Saxena has been examined by the petitioner to prove that he and other volunteers were not lathi charged by the petitioner. The accusation of underweighment was not proved in 1939 and Kalika Lal or the respondent No. 1 had absolutely no justification to attack the personal character of the petitioner by repeating the allegation at the time of this election in Ex. 11.

Baikunth Narain (R. W. 3) has stated that he did not know about the truth or falsity of the allegations made in leaflet Ex. 10 from before but on reading its contents it appeared to him that the contents were mostly true and so the respondent No. 1 tried to justify the allegations made in the leaflets Exs. 10 and 11. Kalika Lal (R. W. 2) however denied the publication of Ex. 11 in Court and he has stated that on reading the contents of the leaflet Ex. 11 he thought that the contents were not correct. Rajdeo Upadhyaya respondent No. 1 has stated that he read the leaflet Ex. 11 for the first time on 30th or 31st January 1952 when Kalika Lal gave it to him. But he has stated, further on that he had a discussion with Kalika Lal regarding the contents of this leaflet Ex. 11 after he had read it and he had asked Kalika Lal as to whether the contents of Ex. 11 were correct or not. It thus becomes clear from the evidence of the respondents No. 1's witnesses that the allegations made in the leaflet Ex. 11 which are *per se* defamatory were not correct and *mala fide* and the respondent No. 1 did not believe them to be true, for if, he had done so he would never have discussed with Kalika Lal about the correctness or otherwise of these allegations. The respondent No. 1 and his agents proclaimed through the leaflet Ex. 11 that the petitioner had bribed Government Officials and got a written report from them regarding underweighment of sugar-cane. These allegations have been proved to be false and these allegations do not come within the word 'expression of opinion, however, unfavourable about a rival candidate' and so the ruling reported in Doabia's Vol. I, p. 63 (Chaudhri Allahdad Khan *vs.* Sufi Abdul Hameed Khan) does not apply to this case. These allegations can not be deemed to be of a trivial and limited character and so they cannot be ignored in the present case and the ruling of Jadunandan Mahto *vs.* Musahib Singh and others reported in Doabia Vol. I, p. 46 also does not help the respondent No. 1. Similarly the ruling Sheikh Mohammad Sadiq *vs.* Dr. Saif Uddin Kitchlew reported in Doabia's Vol. II, p. 117 which lays down that where the word 'ghaddar' was not used with reference to the petitioner's personal character or conduct and it was obviously used in the sense of 'a traitor to the Muslim cause', it had a reference to his political conduct and so the use of this word would not amount to a major corrupt practice also does not help the respondent No. 1 as in this case the two allegations mentioned above were directly against the personal character of the petitioner and as these allegations were false the respondent No. 1 would be deemed to have committed a major corrupt practice by issuing the leaflet Ex. 11 or by conniving at their being issued through his agent Kalika Lal. The legal consequence of the publication of the pamphlet Ex. 11 in our opinion clearly is that the election of the respondent No. 1 would be declared void under sec. 100A(2)(b) which runs as follows :—

"Subject to the provisions of sub-sec. (3), if the Tribunal is of opinion that any corrupt practice specified in sec. 123 has been committed by a returned candidate or his agent or by any other person with the connivance of the returned candidate or his agent the Tribunal shall declare the election of the returned candidate to be void".

Sub-sec. (3) of S. 100 does not apply to this case because it has been shown in the present case that Ex. 11 was published by Kalika Lal and others jointly at the expense of the respondent No. 1 and with his connivance and this corrupt practice is not of a trivial nature and the respondent No. 1

never took any steps to prevent the commission of this corrupt practice. The ruling reported in *Gazette of India Extraordinary* Part II, sec. 3, No. 62, dated 9th March, 1953, p. 767 at p. 783 (*Y. Gadilingana Gowd vs. H. Sitarama Reddi and others*) clearly lays down that the election of a successful candidate should be set aside on the ground of having published a defamatory pamphlet with false allegations and so we come to the conclusion that the election of the respondent No. 1 is liable to be set aside on the ground of his having published the false and defamatory leaflet Ex. 11 against the personal character of the petitioner during the course of the election as this amounts to a major corrupt practice under Sec. 123(5) of the Representation of the People Act 1951.

We decide both these issues accordingly in favour of the petitioner.

Issue No. 8.—Madan Pal Singh petitioner has stated that Moti Lal was an employee in the Chitaoni Sugar Mills but was dismissed and so he was naturally against the present petitioner. The petitioner has proved the writing and signatures of Moti Lal on the original leaflet Ex. 10/1 whose printed copy is Ex. 10 and he has deposed that the allegations and insinuations made in Ex. 10 are baseless and false. Madan Pal Singh has further stated that prior to the distribution of these leaflets when he visited the constituency he found the chances of his success almost sure but after the distribution of the leaflets Exs. 10 and 11 his chances became remote and the effect of these leaflets was against him. The petitioner has denied being a member of the Rashtrya Sowam Sewak Sangh and he has also denied other allegations made in the pamphlet Ex. 10. The respondent p. 2 did not examine Moti Lal in this case. Sri Jagannath Dube respondent No. 2 has admitted cross-examination that Socialist Party workers used red caps and red flags. He had also to admit that a leaflet was published under the signatures of Moti Lal Singh and Samunder Singh in his favour and he paid the entire expenses relating to this leaflet. As such it becomes clear that the leaflet Ex. 10 was published within the knowledge and at the expense of the respondent No. 2 and as this leaflet contained practically the same allegations as the leaflet Ex. 11 it was defamatory and it contained false allegations and so the election of respondent No. 2 would have been set aside on this ground if he had been elected. As the respondent No. 2 has claimed a seat in this case we do not think it proper to give him the seat in view of his having committed a corrupt practice as defined in Sec. 123 sub-sec. (5) of the Representation of the People Act. We hold accordingly and we decide this issue in favour of the petitioner.

Issue No. 9.—Banke Lal (P. W. 1) has stated that he was intimidated by the respondent No. 1 by being told that if he would support the mill manager (petitioner) the respondent No. 1 would have him sent to jail as the respondent was a congress man and the Government was of the congress. Mahadeo Kalwar (P. W. 2) has stated that after the meeting dated 22nd December 1951 in Bolahwa Bazar the respondent No. 1 called him, Banke Lal, Racha Pathak and Munni Lal and told him "you are misleading the people as against me, this is not right". Racha Pathak (P. W. 3) was told by the respondent No. 1 "there is congress government in this State and I belong to the congress party and so you should vote for me; and if you do not vote for me you will have to repent". If you will vote for Sri Madan Pal the result would be disastrous. The statements of these witnesses do not find corroboration from any material circumstance or cogent documentary evidence and so we think that the allegations regarding intimidation of voters cannot be deemed to be duly proved in this case.

We therefore decide this issue against the petitioner.

Issue No. 10.—There is no cogent and sufficient evidence on this record to substantiate this allegation regarding illegal gratification etc. and so we hold that this allegation has not been established. We decide this issue also against the petitioner.

Issue No. 11.—We have shown above that the result of the election was materially affected by the publication of the leaflets Exs. 19 and 11 and also on account of the respondent No. 1's committing major corrupt practices by taking help from village officers and also by using the private carrier No. UP 68 on the polling day. We hold that the result of election was materially affected by the irregularities and corrupt practices mentioned above which were committed by the respondent No. 1.

Issue No. 12.—The return of election expenses of the respondent No. 1, Ex. 23, is said to be irregular, incorrect and illegal because it was filed unsigned, the descriptions of the payees were not given, there were no vouchers in support of certain items of expenditure and the expenditure of Rs. 75 on 23rd January 1952 have been fictitiously shown in the return of election expenses. It has further been urged that 10 persons have been shown as workers of the respondent No. 1 and they have been paid from 1st December 1951 to 25th January 1952 on account of fooding charges and T. A. and 8 of them have been shown again as polling agents and separate T. A. and fooding charges have been shown as against their names and so double payments have been shown. These allegations have been proved to be correct by the election return itself. A sum of Rs. 154 has been shown in the return of election expenses as having been paid to Sant Lal Gupta. Sant Lal Gupta (R. W. 12) who is also known as Sant Parsad has clearly admitted before this Tribunal that he got no remuneration from the respondent No. 1. Again, a sum of Rs. 150/- is said to have been paid to one Hameed who is alleged to have worked as a clerk but the statement of Sant Lal Gupta shows that there was no one else for doing writing work and so this entry also appears to be very sus-

picious A sum of Rs 4/8/- is said to have been paid to Sampat Parsad as T. A. but Sampat Parsad (R W 10) has admitted before this Tribunal that he did not receive any diet money or other allowance for working as polling agent for the respondent No 1. Similarly another sum of Rs 4/8/- has been shown to be paid to Baikunth Nath (R W 3) on account of his T. A. and fooding charges for the polling day but Baikunth Nath has also stated before this Tribunal that he did not receive any such sum and he got only the price of paper and pen.

Again, the expenses incurred on petrol before 22nd January 1952 have not been shown in the return of election expenses and the expenses incurred on the driver of the jeep as well as price of mobil oil and distilled water and expenses on stationery have not been shown. This shows that the return of election expenses which was filed by the respondent No 1 was incorrect in material particulars and even though the defect of not signing the return was condoned *Vide* Ex. 3 it was irregular and so the respondent No. 1 will be deemed to have committed a minor corrupt practice under sub-sec. (4) of S 124 of the Representation of the People Act 1951 but this does appear to have materially affected the election. We hold accordingly and we decide this issue in favour of the petitioner.

Issues Nos. 13 and 14 —We have already shown above that the respondent No. 1 himself indulged in the corrupt practices already mentioned by publishing false pamphlets which materially affected the result of the election and by taking assistance from village officers serving under the U. P. State and also by using a truck on the polling day. The evidence on this record clearly proves that the corrupt practices were committed by the respondent No. 1 and they had not been committed contrary to his orders and without his sanction and connivance. It is also clear from the evidence on this record that these corrupt practices were not of a trivial nature and the respondent No. 1 took no precautions to see that these corrupt practices were not actually committed.

We, therefore, decide both these issues against the respondent No. 1.

Issue No 16.—The petitioner has claimed a seat for himself in this case and it has been contended on behalf of the respondent No. 1 that the petitioner should not be given the seat as the corrupt practices committed by the respondent No. 1, if at all were of trivial nature and limited character and the respondent No 1 took all reasonable precautions and adopted all reasonable means for preventing the commission of such practices. We have shown above that the contention of the respondent No. 1 mentioned above is not correct but we feel that the petitioner should not be given the declaration that he has been duly elected because it has not been proved that but for the votes obtained by the returned candidate by corrupt or illegal practices the petitioner would have obtained a majority of the valid votes, *Vide* S. 101 of the Representation of the People Act 1951. As such, we hold that the petitioner should not be declared elected in the present case and we decide the issue accordingly.

Issue No. 17.—This plea has not been pressed and the mere fact that Sri Shyam Narain and Sri Samunder were made parties to this petition after the expiry of the period of limitation by an order of this Tribunal dated 21st January 1953 will not make this petition time-barred as against the respondents no. 1 to 3 against whom the petition has been filed within the prescribed period of limitation. In any case the petition against the respondents No. 1 to 3 cannot be deemed to be time-barred. The respondents No. 4 and 5 have not come forward to contest this case and so there is no reason for holding that the present petition is time-barred. We decide these issues against the respondent No. 1.

Issue No. 18 —It has been held by this Tribunal by mean of the order dated 21st January 1953 that Sri Shyam Narain and Sri Samunder respondents No. 4 and 5 were duly nominated candidates and so they were necessary parties to this petition. These respondents have not filed any written statements before us and as the contention of the petitioner and the respondents No. 1 and 2 had been fully dealt with in the order dated 21st January 1953 (this finding will be incorporated in the present judgment) we think, for reasons given there, that the present petition could not fail on account of non-joinder of necessary parties. This issue is also decided against the respondents No. 1 and 2.

Issue No. 19 —In view of our findings above we hold that the election of Sri Raj Deo Upadhya, respondent No. 1, dated 25th January 1952, is liable to be declared void under S. 100 sub-sec (2) clause (b) but the petitioner is not entitled to be declared elected under S. 101 of the Representation of the People Act 1951, nor is the respondent No 2 to be declared disqualified.

We therefore order that the election of the respondent No. 1 from Hata North Constituency of Deoria District is void, but we do not exercise our discretion in favour of the petitioner so far as his prayer for being allowed the seat is concerned. The petitioner will get his cost from the respondents No. 1 and 2 amounting to Rs. 647/4/- (Rs. Six-hundred and forty seven and annas four) only. The respondents No 1 and 2 will bear their own costs. The respondents No 3 to 5 will neither pay nor receive any costs.

(Sd.) BRIJ NARAIN, *Chairman.*
(Sd.) B. B. LAL, *Member.*
(Sd.) SUKHDIO PRASAD, *Member.*

The 30th April 1953

BEFORE THE ELECTION TRIBUNAL, GORAKHPUR

PRESENT : Sri Brij Narain—*Chairman.*
 Sri Brij Behari Lal—*Member.*
 Sri Sukhdeo Parshad—*Member.*

IN ELECTION PETITION NO. 253 OF 1952

Sri Madan Pal Singh—*Petitioner.*

Versus

Sri Rajdeo and others—*Respondents.*

ORDER

APPLICATION NO. 71/A2

Issue No. 18.—Were Sri Shyam Narain and Sri Samunder also duly nominated candidates for the seat contested by the parties? If so, what is the effect of their not being made parties in this petition?

Elaborate arguments for both the sides were addressed to us by the learned counsel of the parties upon this issue. The question is whether Sri Shyam Narain and Sri Samunder should be made parties to this petition or not.

Admittedly two persons Sri Shyam Narain and Sri Samunder who had been nominated as candidates and who had been accepted as such by the returning Officer but who had subsequently withdrawn their nomination within the time allowed have not been made parties to this case. Section 82 of the Representation of the People Act of 1951 (hereinafter called the Act) lays down that a petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated. The discussion turns on the term 'duly nominated' and it has to be seen whether a candidate who has withdrawn his candidature is one who is duly nominated. For the petitioner it was urged that the term 'duly nominated' which is not defined in the Act, is interchangeable with the term 'validly nominated'. The expression 'duly nominated' is used in S. 36(3), 52, 53, 54(6), 82 and the proviso to sub-section (4) of S. 158. As against these under sec. 38 the Returning Officer after the expiry of the period within which candidates may be allowed to withdraw, is required to prepare and publish a list of valid nominations. Sec. 54 Sub-clause (5) lays down that in this section reference to candidates shall be construed as reference to candidates who were duly nominated and who had not withdrawn their candidature in the manner and within the time specified in sub-section (1) of S. 37. Further, in S. 52 if a candidate who has been duly nominated under this Act dies after the date fixed for the scrutiny of nominations and the report of his death is received by the Returning Officer before the commencement of the poll, the Returning Officer shall, upon being satisfied of the fact of the death of the candidate countermand the poll and report the fact to the Election Commission and also to the appropriate authority and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election. Provided further that no person who has under sub-section (1) of S. 37 given a notice of withdrawal of his candidature before the countermanding of the poll shall be ineligible for being nominated as a candidate for election after such countermanding. The expressions in Ss. 52 and 54 while referring to the duly nominated candidates appear to exclude a candidate who has withdrawn his candidature from the term 'duly nominated'.

This very point has been the subject of discussion in several cases decided by the Tribunal in India under the Act as well as by the Hon'ble High Court of Bombay. In the case of Sita Ram Hira Chand Birla vs. Yog Raj Singh Shanker Singh Parihar, Special Civil Application No. 2017 of 1952, decided on 19th December, 1952, a certified copy of which is before us, the Hon'ble Chief Justice Chagla and Justice Dixit, discussed this point in their judgment, and held that a candidate who has withdrawn is not a duly nominated candidate within the meaning of S. 82 and that by his withdrawal he relegates himself to the position of a mere elector.

The object of S. 82 is that all parties who were concerned with the actual election and who contested the election should be before the Tribunal. The Hon'ble Judges laid emphasis on the fact that S. 82 did not lay down "all the candidates who were duly nominated", but used the expression "all the candidates who were duly nominated at the election". They considered the distinction between the terms "for the election" and "at the election". The latter term qualified the duly nominated candidate in S. 82. The Hon'ble Bench of the Bombay High Court held that a candidate who had withdrawn did not come within the purview of the term "duly nominated candidate" used in S. 82 of the Act.

The Election Tribunal, Madras, in deciding the election petition of Sri M. C. Lakshmana Pillai vs. Sri O. Chaingan Pillai and others published in the Gazette of India (Extraordinary) Part II, dated December 12, 1952, had a similar case before them. The discussion before them was

whether term 'duly nominated' and 'validly nominated' had the same meaning and were interchangeable. The Madras Tribunal impleaded the two candidates who had withdrawn their candidature within the time allowed by the Act. They considered it unreasonable to insist on persons who had withdrawn their candidature to be made parties to an election petition. Considering the various sections of the Act they came to the conclusion that validly nominated candidates are only those whose names were published under S. 38 while the term 'duly nominated candidate' was considered more comprehensive and included at least all those whose nominations were accepted though some of them might have subsequently withdrawn. They expressed their view that all validly nominated candidates were also duly nominated but conversely it could not be said that all duly nominated candidates were also validly nominated. The term 'validly nominated candidate' is defined in rule 2 sub-clause (f) of the Rules of 1951 made under the Representation of the People (Conduct of Elections and Election Petitions) Rules. It was urged that while the rules did not explain the Act under which they were made they could be used in understanding the intention of the Legislature. It is true a definition in the rules cannot govern the interpretation of the Act but at the same time it is instructive.

The Election Tribunal, Ajmer, in the case of *Lala Menghraj vs. Sri Bhiman Das* and others published in the Gazette of India (Extraordinary) Part II, dated December 24, 1952, discussed this very point. They came to the conclusion that the defect of non-joinder of a necessary party was not fatal to the petition if the petitioner had not claimed a seat for himself.

The Election Tribunal, Jalandhar, in the case of *Prem Nath vs. Ram Kishen* and others published in the Gazette of India, Part II, dated December 19, 1952, had a similar question before them. They found that a candidate who had withdrawn his candidature was included within the term 'duly nominated candidate' under S. 82 of the Act. This Tribunal impleaded the withdrawn candidates. They also came to the conclusion that non-joinder of necessary party under S. 82 did not necessitate a dismissal of the petition. In the case of *Pritam Singh vs. The Hon'ble Sri Charan Singh*, the Election Tribunal at Lucknow whose decision is published in the U. P. Gazette (Extraordinary), dated December 26, 1952, held that the withdrawn candidate was a duly nominated candidate within the meaning of S. 82 and non-joinder was fatal to the case. This Tribunal further considered the effect of S. 80 of the Act and held a petition which did not join a necessary party as not a proper petition under the Act. The Election Tribunal at Allahabad in the case of *Slig Ram Jaiswal vs. Shri Sheo Kumar Pande*, a true copy of which is on this file, were unanimous on the point that a withdrawn candidate did not come within the category of a duly nominated candidate and was not a necessary party.

The Election Tribunal at Rewa in the case of *Sri Kesho Prasad vs. Sri Brij Raj Singh* and others, a true copy of which is filed, came to the unanimous conclusion that the non-joinder of candidate who had withdrawn was not fatal to the maintenance of the petition. One of the Members Sri G. L. Srivastava, however, held that a withdrawn candidate was a duly nominated candidate and was a necessary party under S. 82.

Under the old election rules if a petitioner claimed a seat for himself even withdrawn candidate was a necessary party and without the presence of necessary parties a proper relief cannot be given to the petitioner and as such, in cases where all the necessary parties were not before the Tribunal the petition was dismissed. Under the present Act the relation of the joinder of parties with the relief is not maintained. It is true an election petition is not a matter of concern only for the parties but for the entire electorate and it is, therefore, necessary that all the necessary parties should be before the Court.

The question of joinder of parties is a matter of procedure. Civil Procedure Code has been made applicable under the Act under S. 90 which runs as below]:—

".....Sub clause (2) Subject to the provisions of this Act and of any rules made thereunder every election petition shall be tried by the Tribunal as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits".

The Code of Civil Procedure is not to be followed in cases where there is an express direction in the Representation of the People Act. On points where the Act is silent the Code of Civil Procedure will apply. The Act has not provided any penalty for contravention of S. 82. Where there is an omission in the procedure a penalty of dismissal would not be justifiable.

The cases cited above are not rulings binding on this Tribunal but they are entitled to consideration. We have considered the reasons in each of those cases and come to the conclusion that a withdrawn candidate comes within the meaning of a duly nominated candidate and his joining to the petition was necessary.

When there is so much divergence of opinion upon a point of law we would not blame the petitioner in not joining the candidates who had withdrawn their candidature and the omission appears to be a bona fide one. We have considered the relevant sections of the Act and we think

it equitable to interpret the Act in the spirit which accords with the public benefit. The Election Law is a technical law but it must not be made too technical. The petitioner has made an application for joining these two persons and we would allow the application.

We would, however, keep the question of the effect of non-joinder of these two persons open as it will not be desirable to decide it till we have heard the parties who are to be joined now.

The issue is, therefore, decided, accordingly.

(Sd.) BRIJ NARAIN, *Chairman.*

(Sd.) BRIJ BEHARI LAL, *Member.*

(Sd.) SUKHDEO PARSHAD, *Member.*

The 21st January, 1953.

[No. 19/253/52-Elec. III.]

By Order,

R KRISHNAMURTHY, *Asst. Secy*

